

AUG - 5 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mitchell Lazarus  
Tel: 202/857-6466  
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August 5, 1993

EX PARTE OR LATE FILED

William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222 -- Mail Stop 1170  
1919 M Street NW  
Washington DC 20554


Re: Ex Parte Communication in PR Docket No. 92-257,  
Amendment of the Commission's Rules Concerning Maritime  
Communications

Dear Mr. Caton:

On behalf of Phonic Ear, Inc. and pursuant to Section 1.1206(a)(1) of the Commission's Rules, I am filing herewith two copies of a written ex parte communication that was delivered today in the above-referenced proceeding.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus

Enclosure

cc: George R. Dillon, Chief  
Aviation and Marine Branch  
Private Radio Bureau

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**'AUG - 5 1993**

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Tel: 202/857-6466  
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August 5, 1993

George R. Dillon, Chief  
Aviation and Marine Branch  
Private Radio Bureau  
Federal Communications Commission  
Room 5114 -- Mail Stop 1700C2  
2025 M Street NW  
Washington DC 20554

**Re: PR Docket No. 92-257, Amendment of the Commission's  
Rules Concerning Maritime Communications (Ex Parte  
Communication)<sup>1/</sup>**

Dear Mr. Dillon:

In timely comments and reply comments filed in the above-referenced proceeding, Phonic Ear, Inc. ("Phonic Ear") noted that disposition of the presently vacant 216-217 MHz band is the only issue in the proceeding unrelated to operational questions of maritime communications. Phonic Ear asked the Commission to delete the AMTS allotment at 216-217 MHz in this proceeding and to take up alternative uses of the band (including potential maritime uses) in a separate docket, rather than postpone productive use of the band while the Commission evaluates the complex, disputed issues that make up the rest of this docket.

Phonic Ear also filed a Petition for Rule Making on June 2, 1993, proposing that the 216-217 MHz band be re-allocated to establish a new low-power radio service for disability services and health care. The Petition shows that such a service is compatible with operations on TV Channel 13 and is capable filling important needs that have attained considerable public and governmental attention under the Americans With Disabilities Act of 1990 ("ADA"). The proposed low-power service can help privately-owned public facilities, such as movie theaters, auditoriums,

<sup>1/</sup> Two copies of this letter are being filed today with the Acting Secretary of the Commission pursuant to Section 1.1206(a)(1) of the Commission's Rules.

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convention halls, and other public gathering places, to comply with the ADA by providing auxiliary aids and services that make aurally delivered materials available to people who are hard of hearing, and visually delivered materials available to people who lack full sight.

Now that the time for filing comments and replies has run, Phonic Ear files this ex parte letter to show that the Commission can grant Phonic Ear's request without prejudice to any party of record in this proceeding. Moreover, for the Commission not to do so would run counter to the intent of Congress, clearly expressed in the ADA, to provide ways for disabled Americans to participate fully in the activities of our society now, not at some indefinite time in the future; and it would impair the ability of public gathering places to comply with the statute.

Among the dozens of filings and hundreds of pages in this docket, only four brief passages even mention 216-217 MHz. Those passages appear in full in the Appendix to this letter. They may be fairly summarized as follows:

North Pacific Marine Radio Council and National Marine Electronics Association, filing separately, each suggest that Private Land Mobile Radio stations now using the so-called "Appendix 18" channels be relocated to 216-217 MHz.<sup>2/</sup>

Sea, Inc. proposes that 216-217 MHz be used for simplex data channels.<sup>3/</sup>

American Commercial Barge Lines Co. and Waterway Communications System, Inc., filing jointly, ask the

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<sup>2/</sup> Comments of North Pacific Marine Radio Council at 5 (filed April 26, 1993); Comments of National Marine Electronics Ass'n at 9 (filed June 2, 1993). The channels in question are assigned internationally to maritime services but are used in the United States for Private Land Mobile Radio services. See Maritime Communications, 7 FCC Rcd 7863, 7868 n.42 (1992) (Notice of Proposed Rule Making).

<sup>3/</sup> Comments of Sea, Inc. at 11 (filed June 1, 1993).

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Commission to set aside 216-217 MHz for point-to-point network control of AMTS stations.<sup>4/</sup>

The scope of operation in the first two proposals suggests that their proponents may not fully appreciate the stringency of the safeguards on the 216-217 MHz band for the protection of adjacent TV Channel 13.<sup>5/</sup> In practice, those safeguards have kept the band completely idle.<sup>6/</sup> The third proposal, however, is put forward by Waterway Communications System, Inc. ("Watercom"), which as the sole AMTS licensee is closely familiar with the TV interference restrictions. Yet Watercom provides no data to support its contention that point-to-point use of 216-217 MHz would not interfere with TV Channel 13.<sup>7/</sup> Phonic Ear doubts that the operations proposed by Watercom would be feasible, except perhaps at certain individual sites with transmitting antennas aimed in certain directions.

In any event, such issues need not -- and should not -- be decided in the present docket. *The important point is that none of the proposals raised in relation to 216-217 MHz has any material connection with any other issue in this docket.* Removing the questions relating to 216-217 MHz to a separate docket would not impair their consideration in the slightest; of course, Watercom and any other maritime interests could participate fully in that proceeding. Nor would removal of the 216-217 MHz issues have any effect whatsoever on consideration of the other issues in the instant docket.

Most important, the establishment of a separate docket to address the disposition of 216-217 MHz would put the Commission in a position of supporting the goals of the ADA rather than impeding them, and would

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<sup>4/</sup> Comments of American Commercial Barge Lines Co. and Waterway Communications System, Inc. at 8-9 (filed June 1, 1993).

<sup>5/</sup> Inland Waterways Communications System, 84 F.C.C.2d 875, 897, 912-17 (1981), recon., 88 F.C.C.2d 678 (1981), aff'd sub nom. WJG Tel. Co., 675 F.2d 386 (D.C. Cir. 1982). The Commission imposed the safeguards in the same 1981 order that allocated the band to AMTS.

<sup>6/</sup> See Interactive Video Data Services, 6 FCC Rcd 1368 at ¶ 12 (1991) (Notice of Proposed Rule Making).

<sup>7/</sup> See Appendix.

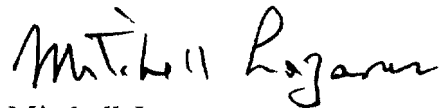
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enable the Commission to put this valuable resource to productive use at the earliest possible time, without having to wait for the resolution of unrelated and complex issues of maritime communications.

If there are any questions about this letter, please call me at the number above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Lazarus". The signature is written in a cursive, flowing style.

Mitchell Lazarus

Enclosure

cc w/encl.: William F. Caton, Acting Secretary, FCC (ex parte notice)  
North Pacific Marine Radio Council  
National Marine Electronics Association  
Counsel for Sea, Inc.  
Counsel for American Commercial Barge Lines Co. and  
Waterway Communications System, Inc.

## APPENDIX

**From Comments of North Pacific Marine Radio Council at 5 (filed April 26, 1993):**

[heading: AMTS Channels] We do not see additional maritime use of these channels, however, we would recommend that land mobile users who are now occupying the lower marine channels (1-4, 60-64) be moved into a portion of this spectrum so that new technology 5 kHz spaced channels for marine use can use those channels. There is potential for 45 new technology channels that could be used for voice and data, which would go a long way towards meeting the maritime communities' current and future needs. We would favor land mobile sharing of these channels where appropriate.

**From Comments of National Marine Electronics Ass'n at 9 (filed June 2, 1993):**

[heading: Inter-Service Sharing] The channels referred to in this paragraph of the NOI are channels 1 thru 4 and channel 60 thru 64, a spread of 250 kHz, that are allocated internationally as duplex channels in the maritime service. The PLMR frequencies in the portion of the maritime VHF spectrums are spaced 15 kHz apart and total 17 channels. Sharing of those frequencies could introduce NBFM to the maritime service. The NMEA believes these PLMR frequencies should be shared with maritime services and also suggests that any PLMR users who seek relief from sharing be encouraged to shift to the unused AMTS channels referred to in the following paragraph 30.

**From Comments of Sea, Inc. at 11 (filed June 1, 1993):**

[heading: AMTS Channels] In the 1 MHz band of unused AMTS channels there is probably insufficient bandwidth to operate duplex channels which limits the use of this band for telephony. However some data services could readily operate on simplex channels.

**From Comments of American Commercial Barge Lines Co. and Waterway Communications System, Inc. at 8-9 (filed June 1, 1993):**

[heading: AMTS Channels] The Commission inquires as to the potential use of the 216-217 MHz band channels, following reallocation of the 218-219 MHz band to the IVDS.

It is respectfully submitted that those channels could and should be open to point-to-point use, which could be used to provide network control for AMTS stations. Given the proximity of these channels to the television 13 broadcast band, the Commission undoubtedly will be concerned about the interference potential to television broadcast reception. The most disciplined use of these channels, and that which is least likely to pose the potential for interference to television broadcast reception, would be in point-to-point service. Any such point-to-point use should be on a secondary basis to adjacent operations, both AMTS and television broadcasting.